

# Rules and Regulations

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 707

#### Truth in Savings

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** NCUA is amending part 707 of its regulations to implement certain statutory changes in the Truth in Savings Act (TISA). These amendments: modify the rules governing indoor lobby signs; eliminate subsequent disclosure requirements for automatically renewable term share accounts with terms of one month or less; repeal TISA's civil liability provisions as of September 30, 2001; and permit disclosure of an annual percentage yield (APY) equal to the contract dividend rate for term share accounts with maturities greater than one year that do not compound but require dividend distributions at least annually.

**DATES:** This rule is effective December 29, 1998. Comments must be received on or before March 29, 1999.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428. You may fax comments to (703) 518-6319. *Please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540.

#### SUPPLEMENTARY INFORMATION:

#### Background

Part 707 of NCUA's regulations implements TISA. 12 CFR part 707. The purpose of part 707 and TISA is to assist

members in making meaningful comparisons among share accounts offered by credit unions. Part 707 requires disclosure of fees, dividend rates, APY, and other terms concerning share accounts to members at account opening or whenever a member requests this information. Fees and other information also must be provided on any periodic statement credit unions send to their members. TISA requires NCUA to promulgate regulations substantially similar to those promulgated by the Board of Governors of the Federal Reserve System (Federal Reserve). 12 U.S.C. 4311(b). In doing so, NCUA is to take into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts.

The Federal Reserve has issued final rules to implement certain statutory changes in TISA. One of these rules: expands an exemption from certain advertising provisions for signs on the interior of a depository institution; eliminates the requirement that depository institutions provide disclosures in advance of maturity for automatically renewable (rollover) accounts with a term of one month or less; and repeals TISA's civil liability provisions, effective September 30, 2001. 63 FR 52105 (September 29, 1998). The Federal Reserve also has promulgated a final rule that permits depository institutions to disclose an APY equal to the contract interest rate for time accounts with maturities greater than one year that do not compound but require interest distributions at least annually. 63 FR 40635 (July 30, 1998). NCUA is issuing final rules that are substantially similar to the above rules issued by the Federal Reserve.

#### Interim Final Rule

The NCUA Board is issuing these rules as interim final rules because there is a strong public interest in having in place consumer oriented rules that are consistent with those recently promulgated by the Federal Reserve. Additionally, as discussed above, NCUA is required to issue rules substantively similar to those of the Federal Reserve shortly after the Federal Reserve issues its final rules. Accordingly, for good cause, the Board finds that, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedures are impracticable, unnecessary, and contrary to the public

interest; and, pursuant to 5 U.S.C. 553(d)(3), the rules shall be effective immediately and without 30 days advance notice of publication. Although the rules are being issued as interim final rules and are effective immediately, the NCUA Board encourages interested parties to submit comments.

#### Section by Section Analysis

##### Section 707.4 Account Disclosures

A brief statement has been added to the account disclosure requirements of § 707.4(b)(6)(iii) for credit unions stating an APY equal to the contract dividend rate for noncompounding term share accounts that have a maturity greater than one year and that require dividend payouts at least annually. The statement alerts members to the fact that dividends cannot remain in the account. This is intended to assist members in comparison shopping between accounts with annual compounding and accounts that do not compound but require dividend payouts during the account term.

##### Section 707.5 Subsequent Disclosures

Section 266(a)(3) of TISA requires depository institutions to provide certain disclosures for rollover accounts at least 30 days before maturity. The Federal Reserve has determined that the purposes of TISA would not be served by requiring advance disclosures for rollover accounts with maturities of one month or less, and has interpreted one month to include 30 or 31 days. NCUA takes the same approach in this context, and does not require disclosures to be provided in advance of maturity for these accounts. Credit unions will continue to provide disclosures when these accounts are opened. Accordingly, § 707.5(c) and the corresponding provision in Appendix C-Official Staff Interpretations, which required disclosure, are deleted.

##### Section 707.8 Advertising

This section requires credit unions that advertise APYs for accounts to disclose other key account features. It requires a brief narrative that parallels the account disclosure statement required by § 707.4(b)(6)(iii). If a credit union states an APY equal to the contract dividend rate in advertising a noncompounding multi-year account that requires dividend payments, the

fact that dividend payouts are mandatory and that dividends cannot remain in the account must be stated. This disclosure is intended to assist members in comparison shopping between multi-year accounts that compound annually and multi-year accounts that do not compound but require dividend payouts at least annually.

Section 263(a) of TISA provides that a reference to a specific dividend rate, yield, or rate of earnings in an advertisement triggers a duty to state certain additional information, including the APY. In 1994, Congress amended section 263(c) of the advertising rules to provide that, if a rate is displayed on a sign, including a rate board, designed to be viewed only from the interior of the premises, then the disclosure requirements of section 263 do not apply. A subsequent statutory amendment to section 263(c) expands the exemption for signs on the interior of the premises. Specifically, all signs inside the premises are exempt from certain advertising disclosures, including signs that are intended to be viewed from outside the premises. Accordingly, the reference in § 707.8(e) to signs that face outside the premises and the corresponding provision in the Appendix C—Official Staff Interpretations are amended. Any sign posted on the outside of the premises remains covered by the advertising provisions unless the sign qualifies for some other exemption, such as the exemption for electronic media.

The Federal Reserve exempts advertisements made through broadcast or electronic media from several of the mandatory advertising disclosures. The Federal Reserve has determined that computer or other advertisements, such as those posted on the Internet, are not exempt under the broadcast or electronic media provision. The rationale for broadcast and electronic media exemptions is that these media have time or space constraints that make it extremely burdensome to provide the required disclosures. Advertisements posted on the Internet generally do not have the same time and space constraints. Such advertisements, therefore, remain subject to the general advertising rules and must comply with the requirements of §§ 707.8(a), (b), (c), and (d).

#### **Section 707.9 Enforcement and Record Retention**

Section 271 of TISA, which provides for civil liability for violations of TISA, has been repealed effective September 30, 2001. This section reflects the effective date of the repeal.

#### **Appendix A to Part 707—Annual Percentage Yield Calculation**

Paragraph E is added to Appendix A, Part I to clarify how APYs may be determined for noncompounding term share accounts that have a maturity greater than one year and that pay dividends at least annually. Two examples are added, including an example calculating the APY for a stepped-rate account.

#### **Appendix B to Part 707—Model Clauses and Sample Forms**

A new model clause is added to describe the effect of dividend payments on earnings.

#### **Appendix C to Part 707—Official Staff Interpretations**

Appendix C has been amended in accordance with the amendments made to §§ 707.5 and 707.8 for the reasons discussed above.

### **Regulatory Procedures**

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under \$1 million in assets). The NCUA has determined and certifies that this interim rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

#### **Paperwork Reduction Act**

This interim rule has no net effect on the reporting requirements in part 707.

#### **Executive Order 12612**

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. It states that: "Federal action limiting the policy-making discretion of the states should be taken only where constitutional authority for the action is clear and certain, and the national activity is necessitated by the presence of a problem of national scope." This interim rule will not have a direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this interim rule does not constitute a significant regulatory action for purposes of the executive order.

### **Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act, 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 this is not a major rule.

#### **List of Subjects in 12 CFR Part 707**

Advertising, Consumer protection, Credit unions, Reporting and recordkeeping requirements, Truth in savings.

By the National Credit Union Administration Board on December 17, 1998.

**Becky Baker,**

*Secretary of the Board.*

For the reasons set forth above, 12 CFR part 707 is amended as follows:

### **PART 707—TRUTH IN SAVINGS**

1. The authority citation for part 707 continues to read as follows:

**Authority:** 12 U.S.C. 4311.

2. Section 707.4 is amended by adding a sentence at the end of paragraph (b)(6)(iii) to read as follows:

#### **§ 707.4 Account disclosures.**

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(iii) \* \* \* For accounts with a stated maturity greater than one year that do not compound dividends on an annual or more frequent basis, that require dividend payouts at least annually, and that disclose an APY determined in accordance with section E of appendix A of this part, a statement that dividends cannot remain on account and that payout of dividends is mandatory.

\* \* \* \* \*

#### **§ 707.5 [Amended]**

3. Section 707.5 is amended by removing paragraph (c) and redesignating paragraph (d) as new paragraph (c).

4. Section 707.8 is amended as follows:

a. Add a new paragraph (c)(6)(iii) to read as set forth below; and

b. Revise paragraph (e)(2)(i) to read as set forth below.

#### **§ 707.8 Advertising.**

\* \* \* \* \*

(c) \* \* \*

(6) \* \* \*

(iii) *Required dividend payouts.* For noncompounding term share accounts with a stated maturity greater than one year that do not compound dividends on an annual or more frequent basis, that require dividend payouts at least annually, and that disclose an APY determined in accordance with section E of appendix A of this part, a statement that dividends cannot remain on account and that payout of dividends is mandatory.

\* \* \* \* \*

(e) Exemption for certain advertisements. \* \* \*

(2) *Indoors signs.* (i) Signs inside the premises of a credit union (or the premises of a share or deposit broker) are not subject to paragraphs (b), (c), (d) or (e)(1) of this section.

\* \* \* \* \*

5. Section 707.9 is amended by revising paragraph (b) to read as follows:

**§ 707.9 Enforcement and record retention.**

\* \* \* \* \*

(b) *Civil liability.* Section 271 of TISA (12 U.S.C. 4310) contains the provisions relating to civil liability for failure to comply with the requirements of TISA and this part; Section 271 is repealed effective September 30, 2001.

\* \* \* \* \*

6. Appendix A to part 707 is amended as follows:

a. Revise the third sentence in the introductory text to Part I to read as set forth below;

b. Revise the first sentence of the introductory text to Part I, A. General Rules to read as set forth below; and

c. A new section E is added to Part I and reads as set forth below.

**Appendix A to Part 707—Annual Percentage Yield Calculation**

\* \* \* \* \*

**Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes**

\* \* \* Special rules apply to accounts with tiered and stepped dividend rates, and to certain term share accounts with a stated maturity greater than one year.

**A. General Rules**

Except as provided in Part I. E. of this appendix, the annual percentage yield shall be calculated by the formula shown below.

\* \* \* \* \*

**E. Term Share Accounts with a Stated Maturity Greater than One Year that Pay Dividends At Least Annually**

1. For term share accounts with a stated maturity greater than one year, that do not compound dividends on an annual or more

frequent basis, and that require the member to withdraw dividends at least annually, the annual percentage yield may be disclosed as equal to the dividend rate.

**Example**

If a credit union offers a \$1,000 two-year term share account that does not compound and that pays out dividends semi-annually by check or transfer at a 6.00% dividend rate, the annual percentage yield may be disclosed as 6.00%.

2. For term share accounts covered by this paragraph that are also stepped-rate accounts, the annual percentage yield may be disclosed as equal to the composite dividend rate.

**Example**

(1) If a credit union offers a \$1,000 three-year term share account that does not compound and that pays out dividends annually by check or transfer at a 5.00% dividend rate for the first year, 6.00% dividend rate for the second year, and 7.00% dividend rate for the third year, the credit union may compute the composite dividend rate and APY as follows:

(a) Multiply each dividend rate by the number of days it will be in effect;

(b) Add these figures together; and

(c) Divide by the total number of days in the term.

(2) Applied to the example, the products of the dividend rates and days the rates are in effect are (5.00%×365 days) 1825, (6.00%×365 days) 2190, and (7.00%×365) 2555, respectively. The sum of these products, 6570, is divided by 1095, the total number of days in the term. The composite dividend rate and APY are both 6.00%.

\* \* \* \* \*

7. Appendix B to part 707 is amended by adding a new paragraph (I)(v) under B-1 Model Clauses For Account Disclosures and reads as follows:

**Appendix B to Part 707—Model Clauses and Sample Forms**

\* \* \* \* \*

**B-1 Model Clauses for Account Disclosures**

\* \* \* \* \*

(I) \* \* \*

(V) *Required dividend distribution.*

This account requires the distribution of dividends and does not allow dividends to remain in the account.

\* \* \* \* \*

**Appendix C to Part 707 [Amended]**

8. Appendix C to part 707 is amended as follows:

a. Remove paragraph (c)1. under Section 707.5 and redesignate paragraph (d)1. under Section 707.5 as new paragraph (c)1.

b. Remove paragraph (e)(2)(i)2. under Section 707.8.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 97-NM-288-AD; Amendment 39-10965; AD 98-26-22]

RIN 2120-AA64

**Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes and KC-10A (Military) Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-10 series airplanes and KC-10A (military) airplanes, that requires repetitive inspections to detect cracking of the lower cap of the wing rear spar, and repair, if necessary. For certain airplanes, this AD also provides for an optional terminating modification for the repetitive inspections. This amendment is prompted by reports of fatigue cracks found in the lower cap of the wing rear spar. The actions specified by this AD are intended to detect and correct fatigue cracking of the lower cap of the wing rear spar, which could result in reduced structural integrity of the airplane.

**DATES:** Effective February 2, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 1999.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ron Atmur, Aerospace Engineer, Airframe Branch, ANM-120L, FAA Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood,